

1 ROB BONTA
Attorney General of California
2 DAVID A. ZONANA
Supervising Deputy Attorney General
3 SOMERSET PERRY, SBN 293316
HEATHER M. LEWIS, SBN 291933
4 Deputy Attorneys General
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1008
Fax: (510) 662-2270
7 E-mail: Somerset.Perry@doj.ca.gov
E-mail: Heather.Lewis@doj.ca.gov
8 *Attorneys for Plaintiffs*

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12
13

14 **CALIFORNIA DEPARTMENT OF**
TOXIC SUBSTANCES CONTROL
15 **and the TOXIC SUBSTANCES**
16 **CONTROL ACCOUNT,**

17 Plaintiffs,

18 v.

19 **ROBERT C. FROJEN AND**
COLLEEN FROJEN TRUST,
20 **COLLEEN FROJEN, individually**
and as trustee on behalf of the
21 **ROBERT C. FROJEN AND**
COLLEEN FROJEN TRUST,
22 **ROBERT WINTERS, an individual,**
and PCA METAL FINISHING, INC.,
23 **a dissolved California corporation,**

24 Defendants.
25

Case No. 8:22-CV-1272

COMPLAINT FOR RECOVERY
OF RESPONSE COSTS and
DECLARATORY RELIEF (42
U.S.C. §§ 9607(a) and 9613(g)(2))

26 Plaintiffs, the California Department of Toxic Substances Control (“DTSC”)
27 and the Toxic Substances Control Account (collectively “Plaintiffs”) allege as
28 follows:

STATEMENT OF THE CASE

1
2 1. This is a civil action brought by Plaintiffs against the Robert C. Frojen
3 and Colleen Frojen Trust and affiliated sub-trusts, Colleen Frojen, as an individual
4 and as trustee of the Robert C. Frojen and Colleen Frojen Trust and affiliated sub-
5 trusts, Robert Winters, and PCA Metal Finishing, Inc. (collectively, “Defendants”) under
6 section 107(a) of the Comprehensive Environmental Response,
7 Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), for the
8 recovery of unreimbursed response costs that Plaintiffs have incurred, and interest
9 on such response costs, in connection with releases and threatened releases of
10 hazardous substances at, beneath, above, and/or from the property located at 1702
11 East Rossllyn Avenue, Fullerton, California 92831, identified by Assessor’s Parcel
12 Number 033-270-30 (“the Site”).

13 2. Plaintiffs further make a claim for declaratory relief, under 28 U.S.C. §
14 2201 and section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for a declaratory
15 judgment that Defendants are jointly and severally liable to Plaintiffs for the
16 response costs Plaintiffs have incurred, and for any further response costs Plaintiffs
17 incur in the future as a result of any release or threatened release of a “hazardous
18 substance,” as defined in CERCLA section 101(14), 42 U.S.C. § 9601(14), at the
19 Site.

JURISDICTION AND VENUE

20
21 3. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
22 and section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

23 4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and
24 section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases and
25 threatened releases of hazardous substances that are at issue occurred in this judicial
26 district.

PLAINTIFFS

5. DTSC is a public agency of the State of California, organized and existing under California Health and Safety Code sections 58009 and 58010. DTSC is responsible under state law for determining whether there has been a release and/or threatened release of a hazardous substance into the environment and for responding to releases and/or threatened releases of hazardous substances.

6. The Toxic Substances Control Account is an account within the State of California General Fund. California Health and Safety Code section 25173.6 establishes the account and the Director of DTSC administers the account. Under California Health and Safety Code section 25361(a), the account shall be a party in any action for the recovery of response costs or expenditures under Chapter 6.8 of Division 20 of the California Health and Safety Code that were incurred by DTSC from the account.

DEFENDANTS

7. The Robert C. Frojen and Colleen Frojen Trust and affiliated sub-trusts (collectively, "Frojen Trust") are: the Frojen Family Trust UDT October 19, 2000, aka the Robert C. Frojen and Colleen Frojen Trust dated October 19, 2000; the Robert C. Frojen and Colleen Frojen Trust (Marital Share) dated October 19, 2000; the Robert C. Frojen and Colleen Frojen Trust (Bypass Share) dated October 19, 2000; the Robert C. Frojen and Colleen Frojen Trust (Survivor's Share) dated October 19, 2000. Frojen Trust has owned the Site since 2001. Frojen Trust is an "owner" of a facility under CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1). The Frojen Trust was also an "owner" of a facility at the time of disposal of hazardous substances under CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2).

8. Colleen Frojen is a citizen of California who resides in Los Angeles County. Frojen is Trustee of the Frojen Trust. Frojen individually held an ownership interest in the Site from approximately 1978 to 2001. In her capacity as Trustee, Frojen is an "owner" of a facility under CERCLA section 107(a)(1), 42

1 U.S.C. § 9607(a)(1). In her capacity as Trustee and individually, Frojen was also an
2 “owner” of a facility at the time of disposal of hazardous substances under
3 CERCLA section 107(a)(2), 42 U.S.C. § 9607(a)(2).

4 9. PCA Metal Finishing, Inc. (“PCA”) is a dissolved corporation that had its
5 principal place of business in Fullerton, California. From approximately 1980 to
6 2007, PCA operated as a metal plating facility on the eastern portion of the Site.
7 PCA was an “owner and operator” of facility under section 107(a)(1) of CERCLA,
8 42 U.S.C. § 9607(a)(1). PCA was also an “owner” and/or “operator” of a facility at
9 the time of disposal of hazardous substances under CERCLA section 107(a)(2), 42
10 U.S.C. § 9607(a)(2).

11 10. Robert Winters is a citizen of California who resides in Orange County.
12 Winters owned PCA from approximately 1997 to 2014. Winters was an “owner”
13 and/or “operator” of a facility under CERCLA section 107(a)(1), 42 U.S.C. §
14 9607(a)(1). Winters was also an “owner” and/or “operator” of a facility at the time
15 of disposal of hazardous substances under CERCLA section 107(a)(2), 42 U.S.C. §
16 9607(a)(2).

17 THE SITE

18 11. The Site is located at 1702 East Rosslynn Avenue, Fullerton, California
19 92831, identified by Assessors’ Parcel Number 033-270-30. Other addresses
20 associated with the Site include 1711, 1723, and 1725 East Kimberly Avenue,
21 Fullerton, California 92831 and 1700, 1704, 1706, 1710, 1712, 1718, 1720, 1724,
22 and 1726 East Rosslynn Avenue, Fullerton, CA 92831.

23 12. The Site occupies approximately 2.3 acres. The former PCA facility
24 occupied the eastern side of the Site, while Orange County Metal Processing
25 occupied the western side of the Site.

26 13. Defendant Frojen Trust has owned the Site since 2001. Defendant
27 Colleen Frojen, as an individual, held an ownership interest in the Site from
28 approximately 1978 to 2001.

1 14. From approximately 1980 to 2007, PCA operated as a metal finishing
2 and plating facility on the eastern portion of the Site. PCA was a “facility” as that
3 term is used in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

4 15. From approximately 1976 to 2011, Orange County Metal Processing
5 (“OCMP”) operated as a metal plating and finishing business on the western
6 portion of the Site. OCMP was a “facility” as that term is used in section 107(a) of
7 CERCLA, 42 U.S.C. § 9607(a).

8 **PCA’S OPERATIONS ON THE EASTERN PORTION OF THE SITE**

9 16. PCA’s operations primarily consisted of chrome and nickel plating of
10 automobile and motorcycle parts and wheels. PCA used chromium, copper, nickel,
11 zinc, cyanide compounds, trichloroethylene (“TCE”) and tetrachloroethylene
12 (“PCE”), among other hazardous substances, in its metal finishing and plating and
13 related operations.

14 17. As a result of PCA’s operations, hazardous substances within the
15 definition of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were released into
16 the environment at and from the Site within the meaning of section 101(22) of
17 CERCLA, 42 U.S.C. § 9601(22). These hazardous substances include chromium,
18 copper, nickel, zinc, cyanide compounds, TCE, and PCE that have been identified
19 in the soil and/or groundwater at the Site.

20 18. DTSC conducted an inspection of PCA on August 23 and 24, 2005. At
21 the conclusion of the inspection, DTSC staff provided PCA staff with a summary of
22 violations of the California Hazardous Waste Control Law, which included failure
23 to properly label hazardous waste, failure to maintain emergency equipment,
24 improper containment of the wastewater treatment system, and failure to minimize
25 the possibility of a release to the environment.

26 19. PCA ceased plating operations at the Site in or around 2007, and
27 thereafter undertook closure activities overseen by the Orange County Health Care
28 Agency and DTSC.

1 20. Mr. Winters and PCA entered into a Corrective Action Consent
2 Agreement with DTSC on June 28, 2007, which required Mr. Winters and PCA to
3 perform further investigation of the eastern portion of the Site under DTSC's
4 oversight, and to pay DTSC's costs incurred in the implementation of the Consent
5 Agreement.

6 21. DTSC conducted another inspection of PCA on August 10, 2007. During
7 the inspection, DTSC staff observed chemical stains, discoloration, and etching on
8 the floors and/or walls in several areas of the facility, including the new and old
9 plating areas, bulk chemical storage area, wastewater treatment system area, nitric
10 acid stripping area, paint stripping area, and polishing area. After the inspection
11 DTSC determined that further investigation was needed to determine the extent of
12 the releases of hazardous substances.

13 22. On May 24, 2012, DTSC issued an Imminent and/or Substantial
14 Endangerment Determination ("ISE Determination") for the eastern portion of the
15 Site where PCA formerly operated. The ISE Determination found that the former
16 PCA site was contaminated with hazardous substances including TCE and PCE.
17 The ISE Determination concluded that a response action was necessary because
18 PCE and TCE were present in the groundwater and/or soil gas in sufficient
19 concentrations to pose a substantial danger to public health and the environment.

20 **OCMP'S OPERATIONS ON THE WESTERN PORTION OF THE SITE**

21 23. OCMP was owned and operated by Manuel Reynoso. DTSC filed a
22 complaint against Mr. Reynoso in this Court for recovery of response costs on
23 January 26, 2022 (Case No. 8:22-cv-00136-DSF-KES).

24 24. Plaintiffs are informed and believe, and based on such information and
25 belief allege, that Mr. Winters was the master lessee of the Site, and sub-leased the
26 western portion of the Site to Mr. Reynoso.

27 25. OCMP's operations primarily consisted of finishing and coating metal
28 parts used by automobile and computer manufacturers. OCMP used chromium,

1 cadmium, zinc, and solvent metal degreasers including TCE and PCE, among other
2 hazardous substances, in its metal finishing and plating, and related operations.

3 26. As a result of OCMP's operations, hazardous substances within the
4 definition of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were released into
5 the environment at and from the Site within the meaning of section 101(22) of
6 CERCLA, 42 U.S.C. § 9601(22). These hazardous substances include hexavalent
7 chromium, cadmium, copper, zinc, cyanide compounds, PCE, and TCE that have
8 been identified in the soil and/or groundwater at the Site.

9 27. DTSC conducted an inspection of OCMP on September 20, 2007. During
10 the inspection, DTSC staff observed chemical stains and discoloration on the floor
11 near the zinc plating line; rusted tanks with chemical residue on the tank sides in the
12 cadmium plating line; tanks that were partially dissolved by chemicals, leaving an
13 uneven, jagged edge; and wet and/or oily floors in a storage area and beneath
14 cadmium plating line tanks. After the inspection DTSC determined that further
15 investigation was needed to determine the extent of the releases of hazardous
16 substances.

17 28. DTSC and Mr. Reynoso entered into a Corrective Action Consent
18 Agreement on March 5, 2009, which required Mr. Reynoso to perform further
19 investigation of the western portion of the Site under DTSC's oversight, and to pay
20 DTSC's costs incurred in the implementation of the Consent Agreement.

21 29. On August 22, 2011, DTSC issued an Imminent and/or Substantial
22 Endangerment Determination for the western portion of the Site where OCMP
23 operated. The ISE Determination found that the OCMP site was contaminated with
24 hazardous substances including cadmium, PCE, and TCE. The ISE Determination
25 concluded that a response action was necessary because there may be a significant
26 public health risk to employees and occupants of the buildings at the Site.

27
28 **DTSC RESPONSE ACTIONS AT THE SITE**

1 30. Beginning in 2011 and continuing through May 2015, DTSC conducted
2 remedial investigations into the soil, soil vapor, and groundwater conditions at the
3 Site. These actions included collecting and analyzing samples of soil, soil gas, and
4 groundwater; monitoring groundwater; and implementing a soil vapor extraction
5 pilot study.

6 31. On May 28, 2015, DTSC approved a Feasibility Study / Remedial Action
7 Plan (“FS/RAP”) for the Site.

8 32. From 2015 to present, DTSC has implemented the remedial actions
9 identified in the FS/RAP, including soil excavation, installation of pilot systems of
10 in-situ chemical oxidation for treating groundwater and soil vapor extraction, and
11 ongoing monitoring.

12 33. Based on the above, from 2011 until the present, DTSC has taken
13 “response” actions at the Site, as that term is defined in section 101(25) of
14 CERCLA, 42 U.S.C. § 9601(25), related to the release and/or threatened release of
15 hazardous substances at the Site. The response actions include, but are not limited
16 to, investigations of soil, soil vapor, and groundwater, development of the FS/RAP,
17 soil excavation, pilot studies of groundwater treatment and soil vapor extraction,
18 and ongoing monitoring.

19 34. As a result of DTSC’s response actions at the Site, Plaintiffs have
20 incurred response costs related to the release and/or threatened release of hazardous
21 substances at, around, and/or beneath the Site.

22 35. Plaintiffs unpaid costs related to the Site from 2007 through December
23 2021 total \$8,334,444, exclusive of interest. These unpaid costs include \$4,198,744
24 for the eastern portion of the Site where PCA operated, and \$4,135,700 for the
25 western portion of the Site where OCMP operated.

26 36. Plaintiffs have incurred and expect to continue to incur additional
27 response costs related to the release and/or threatened release of hazardous
28 substances at, around, and/or beneath the Site.

FIRST CLAIM FOR RELIEF

(Cost Recovery Claim Pursuant to Section 107(a) of CERCLA)

37. Plaintiffs re-allege and incorporate by reference the allegations in each of the preceding paragraphs as though fully set forth herein.

38. The Site, and the horizontal and vertical extent of the hazardous substance contamination caused by releases of hazardous substances from the Site, including, without limitation, any area where any hazardous substance from the Site has come to be located, is a “facility” within the meaning of section 101(9)(A) and (9)(B) of CERCLA, 42 U.S.C. § 9601(9)(A), (9)(B).

39. Each Defendant is a “person” within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

40. DTSC, in its capacity as an agency of the State of California, is a “State” for purposes of recovery of response costs under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

41. Each Defendant is an “owner” and/or “operator” of the Site, and was an “owner” and/or “operator” of the Site “at the time of disposal of a[] hazardous substance” there, as those terms are used in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

42. The hazardous substances disposed and/or treated at the Site contained, without limitation, compounds that can migrate through groundwater, including, but not limited to, the following: chromium, cadmium, copper, nickel, zinc, cyanide compounds, PCE, and TCE. These substances, which are present at the Site, are “hazardous substances,” which are defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14). There has been a “release” or threatened release of hazardous substances, including but not limited to those included in this paragraph, from the Site into the “environment,” within the meaning of sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22).

1 43. Plaintiffs have incurred response costs not inconsistent with the National
2 Contingency Plan, 40 C.F.R. Part 300, resulting from the releases or threatened
3 releases of hazardous substances from the Site, within the meaning of section
4 101(25) of CERCLA, 42 U.S.C. § 9601(25). These response costs include, but are
5 not limited to, costs to monitor, assess, evaluate, and/or respond to the release
6 and/or threatened release of hazardous substances at the Site, as defined in section
7 101(25) of CERCLA, 42 U.S.C. § 9601(25). Plaintiffs are continuing to incur such
8 costs, and Plaintiffs will continue to incur such costs in the future.

9 44. Defendants are jointly and severally liable, without regard to fault,
10 pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Plaintiffs'
11 responses costs resulting from the release or threat of release of hazardous
12 substances from the Site.

13 45. Pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants
14 are also liable for interest accrued on Plaintiffs' response costs.

15 **SECOND CLAIM FOR RELIEF**

16 **(Claim for Declaratory Relief Pursuant to Section 113(g)(2) of CERCLA)**

17 46. Plaintiffs re-allege and incorporate by reference the allegations in each of
18 the preceding paragraphs as though fully set forth herein.

19 47. Under section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), Plaintiffs
20 are entitled to a declaratory judgment that each Defendant is jointly and severally
21 liable to Plaintiffs for any responses costs Plaintiffs have incurred, and for any
22 further response costs Plaintiffs incur in the future.

23 **REQUEST FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

25 1. For a judgment that each Defendant is jointly and severally liable to
26 Plaintiffs, without regard to fault, for all costs of response, removal, and remedial
27 actions, including, but not limited to, implementation and oversight costs, incurred
28

1 by Plaintiffs and resulting from release(s) and/or threatened release(s) of hazardous
2 substances at, beneath, above, and/or from the Site;

3 2. For a declaration that each Defendant is jointly and severally liable to
4 Plaintiffs, without regard to fault, for all future costs, including implementation and
5 oversight costs, incurred by Plaintiffs as the result of any release(s) and/or
6 threatened release(s) of hazardous substances at, beneath, above, and/or from the
7 Site;

8 3. For Plaintiffs' costs of suit;

9 4. For Plaintiffs' attorneys' fees;

10 5. For prejudgment interest; and

11 6. For such other and further relief as the court deems just and proper.

12
13 Dated: July 6, 2022

Respectfully submitted,

14 ROB BONTA
15 Attorney General of California
16 DAVID A. ZONANA
Supervising Deputy Attorney General

17 */s/ Heather M. Lewis*

18 HEATHER M. LEWIS
19 SOMERSET PERRY
Deputy Attorneys General
20 *Attorneys for Plaintiffs*
21 *California Department of Toxic*
22 *Substances Control and the Toxic*
23 *Substances Control Account*
24
25
26
27
28